APPENDICES

APPENDIX A

IN THE SUPREME COURT OF ALABAMA

April 18, 1997

1960682

EX PARTE ROBERT B. HAGOOD, III

Petition for Writ of Certiorari to the
Court of Civil Appeals

(In re: Robert Hagood, III v. Alabama Department of Environmental Management) (2950408)
(Montgomery: CV-94-2459)

CERTIFICATE OF JUDGMENT
Writ Denied

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

SHORES, J.—HOOPER, C.J. AND MADDOX, KENNEDY, AND BUTTS, JJ., CONCUR.

APPENDIX B

ALABAMA
COURT OF CIVIL APPEALS
OCTOBER TERM, 1996-97

2950408

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

v.

ROBERT B. HAGOOD III

Appeal from Montgomery Circuit Court
(CV-94-2459)

ON APPLICATION FOR REHEARING

YATES, Judge

This court's original opinion, dated July 12, 1996, is withdrawn, and the following is substituted therefore:

Robert B. Hagood III was dismissed from his employment as a pollution control specialist with the Alabama Department of Environmental Management ("ADEM"), based upon the charge that he had not met the performance standards of his position. Hagood appealed his dismissal to the State Personnel Board ("the Board"), which

appointed a hearing officer to conduct an evidentiary hearing.

After hearing conflicting testimony concerning Hagood's job performance, the hearing officer concluded that the evidence was insufficient to warrant Hagood's dismissal. The hearing officer submitted his findings to the Board, recommending that Hagood be reinstated with back pay and transferred to a different division of ADEM. ADEM timely filed written exceptions to the hearing officer's report.

After hearing the oral argument of each party's counsel, the Board rejected the hearing officer's findings and recommendations and entered an order upholding Hagood's dismissal. The Board concluded that the hearing officer had failed to recognize that the evidence presented was sufficient to warrant termination. Specifically, the Board stated that "the testimony of Hagood's supervisor . . . [was] sufficient evidence to support the termination charge, and, thus, the hearing officer's findings and recommendations should be rejected."

Hagood appealed the Board's decision to the Circuit Court of Montgomery County. The court, relying upon *State Personnel Dep't v. Mays*, 624 So. 2d 194 (Ala. Civ. App. 1993), reversed the Board's decision and held that the Board's rejection of the hearing officer's findings "was unreasonable, arbitrary, and capricious," and concluded that the Board could only point to "*some* evidence in the record to support ADEM's position." (Emphasis in original.)

ADEM appeals, contending: (1) that the circuit court erroneously substituted its judgment for that of the Board; and (2) that the court erred when it relied on *Mays*, *supra*.

Our review is governed by § 41-22-20(k), Ala. Code 1975. That Code section provides that the Board's order is presumed "prima facie just and reasonable and [that] the court shall not substitute its judgment for that of the

[Board] as to the weight of the evidence on questions of fact." We may not assess the truthfulness of conflicting testimony. *Thompson v. Alabama Dep't of Mental Health*, 477 So. 2d 427 (Ala. Civ. App. 1985). If we conclude that there was evidence to support the Board's order, then we must affirm. *State Dep't of Corrections v. Cooke*, 530 So. 2d 839 (Ala. Civ. App. 1988).

A hearing officer is not a "co-equal statutory authority" with the Board. *Thompson, supra.* Regulation 670-X-5-.07, Alabama State Personnel Department Administrative Code, states that the Board has the authority to "modify, alter, set aside or affirm [a hearing officer's] report." If the Board rejects an officer's findings, the Board's supporting evidence must be substantial when measured against the officer's findings as well as the contrary evidence. *Personnel Board v. King*, 456 So. 2d 80, 82 (Ala. Civ. App. 1984). Substantial evidence is "relevant evidence that a reasonable mind would view as sufficient to support a determination." *Creach v. City of Mobile Police Dep't*, 543 So. 2d 698, 699 (Ala. Civ. App. 1989) (citation omitted).

Hagood's duties as a pollution control specialist were: (1) to inspect facilities falling within the scope of ADEM regulations; (2) to identify and document violations of ADEM regulations at those facilities; (3) to communicate his findings to both the regulated facilities and his ADEM superiors; and (4) to prepare any enforcement actions that might arise from violations he discovered while inspecting those facilities. A proper inspection of a regulated facility requires a pollution control specialist to recognize possible sources of hazardous waste generation, treatment, storage, and disposal.

At the hearing, Dave Davis, Hagood's supervisor, presented evidence indicating: (1) that Hagood's standard of conduct was unsatisfactory; (2) that he lacked a knowledge and an understanding of ADEM regulations; and (3) that he lacked the ability to apply the regulations in

the field. Hagood, primarily through his own testimony, presented evidence contradicting Davis's assertions.

Davis testified that Hagood had been trained to properly gather samples of suspected hazardous wastes. Nevertheless, in Davis's presence, Hagood had used a dirty bottle from a trash can to gather a sample. Hagood admitted that he had done this and argued that his action was appropriate. Davis also testified that, for performance evaluation purposes, he had accompanied Hagood on several inspections. Davis stated that while he was with Hagood, Hagood had failed to recognize obvious possible sources of hazardous waste and had failed to recognize waste storage areas at the facilities under inspection. Hagood admitted that he had failed in this regard, but argued that these particular cases involved differences in judgment between him and Davis. Davis also stated that Hagood had incorrectly informed a facility that it would have to build a new storage area. Davis cited this error and others as examples of Hagood's lack of sufficient knowledge and understanding of ADEM regulations.

Davis's testimony about Hagood's performance and knowledge obviously conflicted with some of Hagood's testimony. Our concern is not with the truthfulness of their testimony, but with whether Davis's testimony, as cited by the Board, was sufficient to warrant the Board's rejecting the hearing officer's report and, thus, affirming Hagood's dismissal. After reviewing the record, we conclude that Davis's evidence not only was relevant, but also was sufficient to support the Board's determination. Therefore, the judgment is reversed and the case is remanded to the circuit court. Our conclusion makes unnecessary a discussion of the other issues raised by ADEM.

ORIGINAL OPINION WITHDRAWN; OPINION SUBSTITUTED; APPLICATION FOR REHEARING OVERRULED AND 39(k) MOTION DENIED; REVERSED AND REMANDED.

Crawley, J., concurs.

Robertson, P.J., concurs in the result only.

APPENDIX C

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

Case No. CV-94-2459-TH

IN THE MATTER OF:

ROBERT B. HAGOOD, III
Plaintiff,

v.

PERSONNEL BOARD OF THE STATE OF ALABAMA and THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
Defendant.

FINAL ORDER

Robert Hagood, the Plaintiff in this case, was dismissed from his state merit system position of Pollution Control Specialist with the Land Division of the Alabama Department of Environmental Management effective October 15, 1993. He appealed that decision to the Personnel Board of the State of Alabama under the provisions of *Ala. Code* 1975, § 36-26-27, and the case was assigned to Hearing Officer E.J. MacArthur for an administrative hearing. The Hearing Officer heard extensive testimony that involved conflicting evidence and was required to assess the credibility of several witnesses. He found that the evidence presented by the Alabama Department of Environmental Management ("ADEM") was not sufficiently credible to justify Hagood's dismissal.

Specifically, the Hearing Officer found the following facts from the conflicting testimony:

In the letter of termination dated October 5, 1993, Leigh Pegues, Director of Alabama Department of Environmental Management informed Mr. Hagood that "I have considered the circumstance regarding your job performance and have decided that termination of your employment is appropriate". Mr. Pegues goes on to state that "you have been given numerous warnings concerning the inadequacy of your performance and have been given numerous opportunities in which to improve your performance." To these charges, the employee/appellant has filed a general denial. Specifically, Hagood contents(sic) that the charges against him are "nothing more than petty personality differences" and are due to a questionable management style at ADEM. Further, Hagood contends that his work performance has been more than competent.

A review of Robert Hagood's personnel record indicates that he possesses a B.A. in History, a B.A. in Biology, and an A.S. in Forestry. Hagood was hired by the State of Alabama, Department of Public Health on or about April 26, 1988.

Hagood transferred to the Alabama Department of Environment Management on or about March 23, 1991. *No* employee disciplinary action was indicated at ADEM or Public Health and no such action was cited in the letter of termination dated October 15, 1993. A further review of employee/appellant's employee performance appraisals shows that while in Public Health (from 1988 through 1991) Hagood's work was consistently rated as "exceeds standards". Further, Hagood's attendance, punctuality, cooperation with co-workers and compliance with rules (standards of conducts) were consistently indicated to be satisfactory. Specifically, Hagood was said to work "efficiently with the public" and to learn from mistakes made.

However, a review of said employee performance appraisals while at ADEM indicates that Hagood's work was initially evaluated as "meet standards", but as of August 1992, said employee's work was evaluated as "does not meet standards". His attendance, punctuality and cooperation with co-workers continued to be rated as satisfactory; however, his compliance with rules (standards of conduct), though initially rated as satisfactory, were rated unsatisfactory in August of 1992. It is entirely appropriated (sic) to note that nothing in this hearing indicated to this Hearing Officer that at any time during Hagood's employment at ADEM his standard of conduct failed to be satisfactory. It would seem to this Hearing Officer that this is an inconsistent and some what arbitrary element of this employee's job appraisal.

Initially, Hagood's supervisors, when considering his probationary status (that is their consideration of recommending Hagood for permanent status) stated that in most respects Hagood met the standards required of a newly employed Pollution Control Specialist and that the Department was currently utilizing his skills regarding the management of pesticides. However, the same statement was accompanied by statements indicating that Hagood's "should strive to improve his writing techniques in dealing with the regulatory community". Further he should "improve his inspection techniques so as to present a more professional and authoritative demeanor in the field". Additionally Hagood was encouraged to reflect that demeanor at the office.

To a great extent these statements sum up this hearing and may well have summed up Bob Hagood's entire employment at ADEM. The Alabama Department of Environment Management focused its case on David Davis' testimony. Mr. Davis is an Environ-

mental Scientist III with the Alabama Department of Environmental Management. He is the supervisor over the north unit compliance branch of the land division. Davis stated that a Pollution Control Specialist had to communicate with the public who are generating hazardous waste. Said Pollution Control Specialist has to determine whether the hazardous waste is generated from a small or big producer, what is the point of origin and where and how is the hazardous waste stored. To do this, the Alabama Department of Environmental Management relies on field inspectors. Robert Hagood was such a field inspector in his position as a Pollution Control Specialist. Davis testified that "it is very hard to grasp the regulations". Further, an employee would typically spend much of his early time at ADEM learning said regulations and would then go with a more senior inspector to the field to apply the knowledge of the regulations to practical circumstances. Davis stated that on numerous early occasions Hagood simply did not have a good grasp of the regulation and had an even harder time applying them to practical situations. Davis stated that Hagood was counseled numerous times on both his lack of knowledge and understanding of the regulations and his lack of ability to apply these regulations in the field. Further, Davis stated that no other employee had such a difficult time as Bob Hagood. Davis further testified that Hagood was one of the first employees which he hired and supervised in his position of Environmental Scientist III.

During Hagood's tenure at ADEM, his trips to the field to apply the knowledge of the regulations became more and more infrequent. Further, it seemed evident from the testimony at this hearing that Bob Hagood's error and omissions in the field were not corrected [by his supervisors] at that time but were later reported and used to show why Hagood was not

performing his job. Davis further stated that he made effort after effort the first year to help this employee. Davis stated that he could have fired Hagood, but chose to give him another chance and extra training. It should be noted that at this point in Hagood's work for the Alabama Department of Environmental Management his field opportunities were vastly limited and he spent much of his time in the office. It was testified to that Bob Hagood used this time to thoroughly learn the regulations. When Bob Hagood testified, he indicated that at first he did not catch on to the regulations; however, he indicated that he spent the time in which he was kept at the ADEM office to thoroughly learn the regulations. Numerous witnesses as called on behalf of Bob Hagood further verified this fact. *They stated in their opinion, that Bob had a better understanding of the regulations at the time of his termination than did most any other field inspector.*

After the first year and the chances which Davis indicated were given to Hagood, problems developed with Hagood's regulatory presence, his writing skills, and his communication skills in the field. At one point in time Davis referred to Hagood's writing as that of a fifth grade level. However, it should be noted, that when this Hearing Officer reviewed some of the problems which Davis had with Hagood's written communications, they appeared to be only differences in style and not that of content or correct grammar. Further, one witness testified that he even wrote correspondence for Hagood in the same style which he used and which seldom drew any corrections. This correspondence was sent in as if Bob Hagood had written it and it was marked up with corrections.

As to Hagood's "regulatory presence" Davis testified that he felt Bob Hagood laughed inappropriately

and that the regulated community would not take him seriously. This was also testified to by Phillip Woods who indicated that Davis and Jenkins did not feel that Hagood was competent and that they felt the regulated community would not take him seriously. Specifically, they felt the regulated community would see him laugh and this would some how compromise his ability as an inspector.

Although Davis testified that he did not feel that Hagood took his job seriously, showed improper field demeanor and poor judgment it is entirely appropriate to note the demeanor of these two men at this hearing. Clearly, Mr. Davis and his supervisor, Steve Jenkins, are much more formal than Bob Hagood is. Further, at this hearing, this Hearing Officer observed that Bob Hagood was much more open and relaxed than Davis and Jenkins.

Davis testified that Hagood was so for (sic) behind in his work at the office that he was not allowed to go out in the field. This testimony does not seem consistence (sic) with testimony from the other witnesses who indicated that Hagood was relegated to a desk and given no job duties. Further, there was ample testimony that others were given more opportunities to go into the field than Bob Hagood was.

The last opportunity for Bob Hagood, according to Alabama Department of Environmental Management was a field inspection done in early fall of 1993. At that time Davis noted numerous errors which existed in Hagood's field inspections. When Bob Hagood testified to these inspections, he cleared up many of the questions concerning said inspections. Hagood had not been given credit for finding a waste site and rather only he had been criticize (sic). *Further, there were some disagreements as to the exercise of professional judgment or to the interpretation or regulations; however, it appeared from Hagood's testimony*

that he had a better grasp on these regulations than did his supervisor. Also, Phillip Woods testified that Robert Hagood was as competent as any other inspector and more competent than most. He testified that he was extremely intelligent and that he had been picked on because he was "country". Woods additionally testified that Hagood had not been given a fair chance and was not being given the same opportunities to succeed that other employees including himself were. Walter Nicholas testified that Bob Hagood was not treated right and was not given a chance. Stephen Maurer testified that Hagood was getting a good grasp of the regulations and that he had an outstanding understanding of chemistry. Charles Sulliven testified that Hagood had been singled out and mistreated. Sulliven further testified that supervisors took exception to Hagood's intelligence. Additionally, Sulliven testified that Hagood was very competent.

In conclusion, this case may well revolve around a difference of personalities rather than a deficiency in job performance. Arguable (sic) Robert Hagood did not catch on to field inspections nor did he understand the regulations as quickly as others did; however, it appears clear that at some point during Hagood's first year at ADEM, his supervisors lost all confidence in his capabilities and his abilities to improve. Based on this, they took many of Hagood's opportunities to learn and to show competence in field investigations away from him. Further, they, in large part, relegated him to a desk. Rather than accept these lack of duties, Bob Hagood developed a proficiency in understanding the regulations at ADEM. Further, as to the errors in Hagood's correspondence as cited by Davis, the changes were mostly editorial in nature.

The Hearing Officer concluded from the disputed evidence that Hagood had been treated differently from other

employees and that his dismissal was wrongful in the sense that he was judged by more stringent standards than those by which other employees were judged. He recommended that Hagood's dismissal be overturned and that he be paid his back pay.

ADEM appealed the Hearing Officer's decision to the State Personnel Board under the provisions of *Ala. Code* 1975, § 41-22-15 and Rule 670-X-5-.07 of the Administrative Code. The Board continued the case at two of its monthly meetings, being unable to reach a conclusion upon the merits of the appeal. Finally, on October 11, 1994, it entered an order observing that there was *some* evidence in the record to support the dismissal, and that it "rejected" the findings of the Hearing Officer as to the conflicting evidence and as to the demeanor of the witnesses. It is noteworthy that the Board *made no findings as to why it rejected conflicting evidence in Hagood's favor, or whether it decided that the witnesses who testified for Hagood were not credible, or why it elected to believe the testimony of Hagood's supervisors, the credibility of which had been questioned by the Hearing Officer.*

The Board did not even discuss or allude to the portion of the evidence that the Hearing Officer relied upon to reach his conclusion.

CONCLUSIONS OF LAW

This case is clearly controlled by the law as stated in the case of *State Personnel Department v. Mays*, 624 So.2d 194 (Ala. 1993). There, a hearing officer had weighed the credibility of conflicting testimony and found in favor of the employee. The Board had rejected the recommendations of the hearing officer by claiming that he had ignored certain pieces of evidence. The trial court and Court of Civil Appeals noted, however, that the hearing officer had made careful findings upon all of the evidence. At 624 So.2d 197-198, the appellate court said:

We recognize that the Board is not bound by the credibility determinations of the hearing officer. However, we do not find the Board's supporting evidence in this case to be "substantial when measured against the [hearing officer's] contrary findings as well as the opposing evidence." Furthermore, while the hearing officer's recommendations are not binding upon the Board, the Board's discretion is not unbridled. The Board must have some reasonable justification for its determination or base it upon adequate principles or fixed standards so that it will not be arbitrary or capricious. *Alabama Medicaid Agency v. Beverly Enterprises*, 521 So.2d 1329 (Ala. Civ.App. 1987).

In its order reversing the Board's decision, the trial court stated as follows:

"This court has searched in vain for any reasonable grounds upon which the Personnel Board can rely for rejecting [the hearing officer's] findings. There is no evidence that the Board received any new evidence at the review hearing. There is no evidence that the Board observed some procedural error in the transcript of the hearing before [the hearing officer]. There is no evidence that [the hearing officer] omitted from consideration some substantive testimony that would be indicative [of] a flawed judgment. There is no evidence that [the hearing officer] was biased in any way for or against any party or witness. During oral arguments, counsel for the Department of Personnel could offer no justification for the Board's rejection of [the hearing officer's] finding."

"The only ground upon which the [Personnel Department] stands for rejecting [the hearing officer's] findings and recommendation is that he ignored certain contemporaneous circumstances. As pointed out earlier, the facts relied upon by the Board in reject-

> ing the hearing officer's findings are clearly erroneous in that [the hearing officer] specifically addresses each alleged omission in his report."
>
> In view of the standard of review we are governed by in this case, we find that the Board's action was unsupported by the evidence. We hold that the trial court correctly determined that the Board's rejection of the findings of the hearing officer was done without substantial justification and was, therefore, unreasonable, arbitrary, and capricious. § 41-22-20 (k)(7), Code 1975. Therefore, the trial court's judgment is affirmed. (Some citations omitted).

Here, the Personnel Board did not point to any evidence that was ignored by the Hearing Officer as it had done in *Mays*. Rather, the Board only noted that it could find *some* evidence in the record to support ADEM's position. The hearing in *Mays* clearly requires more than that of the Board. To withstand a challenge that its action was unreasonable, arbitrary, and capricious, it should have addressed, and not have totally ignored, the wealth of contrary evidence that the Hearing Officer clearly believed. It also should have addressed the concerns of the Hearing Officer about the *demeanor* of the witnesses for ADEM.

For the foregoing reasons it is ORDERED, ADJUDGED AND DECREED that the decision of the Personnel Board entered on October 11, 1994 was unreasonable, arbitrary, and capricious, and that it must be set aside under *Ala. Code* 1975, § 41-22-20. The employee, Robert B. Hagood, is hereby ordered to be restored to his position of Pollution Control Specialist with full back pay.

Cost of these proceedings are taxed against the Defendants.

Done this the 21st day of December 1995.

/s/ H. Randall Thomas
Circuit Judge

APPENDIX D

BEFORE THE PERSONNEL BOARD
OF THE STATE OF ALABAMA

IN THE MATTER OF
THE APPEAL OF
ROBERT B. HAGOOD, III

OCTOBER 11, 1994

This matter came before the Board upon the dismissal of the employee from his employment with the Department of Environmental Management. The employee was dismissed effective October 15, 1993, based upon charges contained in a letter to the employee dated that date. This matter was assigned to the Honorable E. J. McArthur as Hearing Officer for the State Personnel Board and a hearing was held on this matter on March 18, 1994. The Hearing Officer's Report, together with Exceptions to the Report filed by the department and a Response to such Exceptions filed by the employee, is now before the Board for consideration. The Board has also had the benefit of oral arguments.

Essentially, the charge against the employee is inadequate job performance.

The Hearing Officer found that there was a lack of evidence to show that Robert Hagood was deficient in his job performance to any significant degree, and recommended his reinstatement. However, the Hearing Officer reports the testimony of Hagood's supervisor of counseling on a number of occasions for Hagood's lack of understanding of the pollution regulations, and Hagood's lack of ability to apply these in the field, Hagood's poor communication skills and regulatory presence, and the further warnings to the employee through the performance evaluation process. The Board concludes, as a matter of

law, that this testimony is sufficient evidence to support the termination charge and thus the Hearing Officer's findings and recommendation should be rejected.

Based upon this conclusion, the Board is of the opinion that the decision of the appointing authority to dismiss the employee is supported by the evidence and that the termination was warranted. The Board has searched the record for evidence of mitigation of punishment and finds that mitigation of punishment is not appropriate in this case.

It is therefore the Order of this Board that the decision of the appointing authority to dismiss the employee is hereby affirmed.

/s/ Halycon V. Ballard
HALYCON V. BALLARD
Secretary

/s/ Joe H. Williamson
JOE H. WILLIAMSON
Chairman

/s/ Ruth Harrell
RUTH HARRELL
Vice-Chairman

/s/ Joe N. Dickson
JOE N. DICKSON
Member

/s/ Harry McMillan
HARRY MCMILLAN
Member

APPENDIX E

IN THE MATTER OF THE APPEAL OF ROBERT HAGOOD

BEFORE THE STATE PERSONNEL BOARD

A hearing was held on this matter before the undersigned Hearing Officer on Friday, March 18, 1994. Mr. Hagood was present and represented by his Attorney, Julian McPhillips. The Department of Environmental Management was represented by its Attorney, Ms. Rebecca Patty.

STATEMENT OF THE CASE

Robert Hagood appeals his dismissal as a Pollution Control Specialist with the Land Division of the Alabama Department of Environment Management effective October 15, 1993. In the letter of termination dated October 15, 1993, Leigh Pegues, Director of Alabama Department of Environment Management informed Mr. Hagood that "I have considered the circumstance regarding your job performance and have decided that termination of your employment is appropriate". Mr. Pegues goes on to state that "you have been given numerous warnings concerning the inadequacy of your performance and have been given numerous opportunities in which to improve your performance". To these charges, the employee/appellant has filed a general denial. Specifically, Hagood contents that the charges against him are "nothing more than petty personality differences" and are due to a questionable management style at ADEM. Further, Hagood contends that his work performance has been more than competent.

FINDING OF FACTS

A review of Robert Hagood's personnel record indicates that he possesses a B.A. in History, a B.A. in Biol-

ogy and a A.S. in Forestry. Hagood was hired by the State of Alabama, Department of Public Health on or about April 26, 1988. Hagood transferred to the Alabama Department of Environment Management on or about March 23, 1991. *No* employee disciplinary action was indicated at ADEM or Public Health and no such action was cited in the letter of termination dated October 15, 1993. A further review of employee/appellant's employee performance appraisals shows that while in Public Health (from 1988 through 1991) Hagood's work was consistently rated as "exceeds standards". Further, Hagood's attendance, punctuality, cooperation with co-workers and compliance with rules (standards of conducts) were consistently indicated to be satisfactory. Specifically, Hagood was said to work "efficiently with the public" and to learn from mistakes made.

However, a review of said employee performance appraisals while at ADEM indicates that Hagood's work was initially evaluated as "meet standards", but as of August, 1992, said employee's work was evaluated as "does not meet standards". His attendance, punctuality and cooperation with co-workers continued to be rated as satisfactory; however, his compliance with rules (standards of conduct), though initially rated as satisfactory, were rated unsatisfactory in August of 1992. It is entirely appropriated to note that nothing in this hearing indicated to this Hearing Officer that at any time during Hagood's employment at ADEM his standard of conduct failed to be satisfactory. It would seem to this Hearing Officer that this is an inconsistent and some what arbitrary element of this employee's job appraisal.

Initially, Hagood's supervisors, when considering his probationary status (that is their consideration of recommending Hagood for permanent status) stated that in most respects Hagood met the standards required of a newly employed Pollution Control Specialist and that the Department was currently utilizing his skills regarding the

management of pesticides. However, the same statements was accompanied by statements indicating that Hagood "should strive to improve his writing techniques in dealing with the regulatory community". Further he should "improve his inspection techniques so as to present a more professional and authoritative demeanor in the field". Additionally Hagood was encouraged to reflect that demeanor at the office.

To a great extent these statements sum up this hearing and may well have summed up Bob Hagood's entire employment at ADEM. The Alabama Department of Environment Management focused its case on David Davis' testimony. Mr. Davis is an Environmental Scientist III with the Alabama Department of Environmental Management. He is the supervisor over the north unit compliance branch of the land division. Davis stated that a Pollution Control Specialist had to comunicate with the public who are generating hazardous waste. Said Pollution Control specialist has to determine whether the hazardous waste is generated from a small or big producer, what is the point of origin and where and how is the hazardous waste stored. To do this, the Alabama Department of Environmental Management relies on field inspectors. Robert Hagood was such a field inspector in his position as a Pollution Control Specialist. Davis testified that "it is very hard to grasp the regulations". Further, an employee would typically spend much of his early time at ADEM learning said regulations and would then go with a more senior inspector to the field to apply the knowledge of the regulations to practical circumstance. Davis stated that on numerous early occasions Hagood simply did not have a good grasp of the regulation and had an even harder time applying them to practical situations. Davis stated that Hagood was counseled numerous times on both his lack of knowledge and understanding of the regulations and his lack of ability to apply these regulations in the field. Further, Davis stated that no other employee had had such a difficult time as Bob Hagood. Davis further

testified that Hagood was one of the first employees which he hired and supervised in his position of Environmental Scientist III.

During Hagood's tenure at ADEM, his trips to the field to apply the knowledge of the regulations became more and more infrequent. Further, it seemed evident from the testimony at this hearing that Bob Hagood's errors and omissions in the field were not corrected at that time but were later reported and used to show why Hagood was not performing his job. Davis further stated that he made effort after effort the first year to help this employee. Davis stated that he could have fired Hagood, but chose to give him another chance and extra training. It should be noted that at this point in Hagood's work for the Alabama Department of Environmental Management his field opportunities were vastly limited and he spent much of his time in the office. It was testified to that Bob Hagood used this time to thoroughly learn the regulations. When Bob Hagood testified, he indicated that at first he did not catch on to the regulations; however, he indicated that he spent the time in which he was kept at the ADEM office to thoughly learn the regulations. Numerous witnesses as called on behalf of Bob Hagood further verified this fact. They stated in their opinion, that Bob had a better understanding of the regulations at the time of his termination than did most any other field inspector.

After the first year and the chances which Davis indicated were given to Hagood, problems developed with Hagood's regulatory presence, his writing skills, and his communication skills in the field. At one point in time Davis referred to Hagood's writing as that of a fifth grade level. However, it should be noted, that when this Hearing Officer reviewed some of the problems which Davis had with Hagood's written communications, they appeared to be only differences in style and not that of content or correct grammar. Further, one witness testified that he even wrote correspondence for Hagood in the same style which he used and which seldom drew any corrections.

This correspondence was sent in as if Bob Hagood had written it and it was marked up with corrections.

As to Hagood's "regulatory presence" Davis testified that he felt Bob Hagood laugh [sic] inappropriately and that the regulated community would not take him seriously. This was also testified to by Phillip Woods who indicated that Davis and Jenkins did not feel that Hagood was competent and that they felt the regulated community would not take him seriously. Specifically, they felt the regulated community would see him laugh and this would some how compromise his ability as an inspector.

Although Davis testified that he did not feel that Hagood took his job seriously, showed improper field demeanor and poor judgment, it is entirely appropriate to note the demeanor of these two men at this hearing. Clearly Mr. Davis and his supervisor, Steve Jenkins, are much more formal than Bob Hagood is. Further, at this hearing, this Hearing Officer observed that Bob Hagood was much more open and relaxed than Davis and Jenkins.

Davis testified that Hagood was so for [sic] behind in his work at the office that he was not allowed to go out in the field. This testimony does not seem consistence [sic] with testimony from the other witnesses who indicated that Hagood was relegated to a desk and given no job duties. Further, there was ample testimony that others were given more opportunities to go into the field than Bob Hagood was.

The last opportunity for Bob Hagood, according to Alabama Department of Environmental Management was a field inspection done in early fall of 1993. At that time Davis noted numerous errors which existed in Hagood's field inspections. When Bob Hagood testified to these inspections, he cleared up many of the questions concerning said inspections. Hagood had not been given credit for finding a waste site and rather only he had been criticize [sic]. Further, there were some disagreements as to

the exercise of professional judgment or to the interpretation of regulations; however, it appeared from Hagood's testimony that he had a better grasp on these regulations than did his supervisor. Also, Phillip Woods testified that Robert Hagood was as competent as any other inspector and more competent than most. He testified that he was extremely intelligent and that he had been picked on because he was "country". Woods additionally testified that Hagood had not been given a fair chance and was [sic] not been given the same opportunities to succeed that other employees including himself were. Walter Nicholas testified that Bob Hagood was not treated right and was not given a chance. Stephen Maurer testified that Hagood was getting a good grasp of the regulations and that he had an outstanding understanding of chemistry. Charles Sulliven testified that Hagood had been singled out and mistreated. Sulliven further testified that supervisors took exception to Hagood's intelligence. Additionally, Sulliven testified that Hagood was very competent.

In conclusion, this case may well revolve around a difference of personalities rather than a deficiency in job performance. Arguable, [sic] Robert Hagood did not catch on to field inspections nor did he understand the regulations as quickly as other [sic] did; however, it appears clear that at some point during Hagood's first year at ADEM, his supervisors lost all confidence in his capabilities and his abilities to improve. Based on this, they took many of Hagood's opportunities to learn and to show competence in field investigations away from him. Further, they, in large part, relegated him to a desk. Rather than accept these lack of duties, Bob Hagood developed a proficiency in understanding the regulations at ADEM. Further, as to the errors in Hagood's correspondence as cited by Davis, the changes were mostly editorial in nature.

CONCLUSIONS OF LAW

Having heard all of the evidence presented in this hearing and in consideration of the demeanor of the parties and

in consideration of the entire work record of Robert Hagood there is a lack of evidence to show that Robert Hagood was deficient in his job performance to any significant degree. Further, it appears evident from this hearing that Robert Hagood was treated differently from other employees in that he apparently was held to a more stringent standard as far as his work.

RECOMMENDATION

For the above stated reasons and in consideration of the employee's entire work record, it is hereby recommended that Robert Hagood's dismissal be overturned and that he be reemployed as Pollution Control Specialist with the Alabama Department Environmental Management with back pay. Further, it is this Hearing Officer's opinion that Robert Hagood should be transferred to a different division at ADEM.

/s/ E.J. "Mac" MacArthur
E.J. "MAC" MACARTHUR
Hearing Officer

April 9, 1994